STATE OF MICHIGAN

DEPARTMENT OF LABOR & ECONOMIC GROWTH

OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXX
Petitioner **File No. 86824-001**

v

Humana Insurance Company
Respondent
_____/

Issued and entered
this 1st day of February 2008
by Ken Ross
Acting Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On December 20, 2007, XXXXX, authorized representative of XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act MCL 550.1901 *et seq.* The Commissioner accepted the request on December 27, 2007.

The Commissioner notified Humana Insurance Company (Humana) of the external review and requested the information used in making its adverse determination. Because this case involves medical issues, the Commissioner assigned it to an independent review organization (IRO) which provided its recommendation to the Commissioner on January 8, 2008.

II
FACTUAL BACKGROUND

The Petitioner is covered by an individual medical policy underwritten by Humana that was effective on August 22, 2005.

The Petitioner was treated by various physicians from August 22, 2005, through August 22, 2006, for hepatomegaly (enlargement of the liver). When claims for services were submitted, Humana denied coverage on the basis that the services were treatment for a pre-existing condition and therefore excluded.

The Petitioner's authorized representative appealed the denial through Humana's internal grievance process. Humana reviewed the claims but maintained its denial and issued a final adverse determination dated October 19, 2007.

The Petitioner's authorized representative says in a December 26, 2007, letter to the Office of Financial and Insurance Services that the Petitioner has also been denied coverage for "nerve, muscle, pain, and other symptoms" as well as for the liver function-related services. However, only the hepatomegaly (liver function) services were the subject of the internal grievance and Humana's adverse determination, so this review will address only that issue.

III
ISSUE

Is Humana correct in denying coverage for the Petitioner's treatment and services for hepatomegaly from August 22, 2005, through August 22, 2006?

IV
ANALYSIS

Petitioner's Argument

The Petitioner's authorized representative says the Petitioner purchased his health care policy in August 2005 and since that time Humana has denied coverage from the effective date through August 22, 2006. She further says that the Petitioner made all disclosures that he was aware of during the detailed 80-minute discussion he had with Humana when he applied.

The Petitioner's authorized representative argues that Humana failed to review the Petitioner's entire history and take into account that for a three-week period in 2003 he was put

on medication that affected his liver, and that by 2006 tests established that his liver had fully recovered its function.

The Petitioner believes that Humana has failed to make a proper assessment of his history and conditions and should cover the denied services.

Humana Insurance Company's Argument

In its final adverse determination Humana says the claims for services from August 22, 2005, through August 22, 2006, for hepatomegaly were correctly denied because they were for a pre-existing condition. Humana cited entries from the Petitioner's medical records to support its decision:

> From the office notes of XXXXX, MD:
>
> November 6, 2003 – "Informed [the Petitioner] hepatitis test. Liver test continues to improve…."
>
> June 14, 2005 – "Hepatomegaly is present with a liver span of 14 cm. * * * [H]istory of fatty liver…."
>
> June 15, 2005 – "Elevated liver function – pain. Abdominal and retroperitoneal ultrasound impression: There is sludge noted in the floor of gallbladder, possibility of some mild hepatomegaly possibly due to fatty infiltration is raised and the spleen may be minimally enlarged as well. * * *"
>
> From the office notes of XXXXX, MD:
>
> July 6, 2005 – "Hepatic and Renal function Study – Bilirubin total – 1.8H, Bili Direct .7H. Bili indirect 1.1H, ALT 152H, AST222H, Phos Alk 217H, Pending Heliobacter Pylori AB."
>
> July 8, 2005 – "Heliobacter Pylori Ab IGG-Negative."

Humana says the Petitioner's policy contains a pre-existing condition limitation and that the Petitioner did not disclose treatment for hepatomegaly on his application when he applied for coverage. The policy's pre-existing condition limitation section says:

> **What is a Pre-existing condition?**
>
> A pre-existing condition exists if a covered person received medical advice, diagnosis, care or treatment was recommended or received for a sickness or bodily injury which would have

> caused an ordinarily prudent person to seek treatment within 6 months prior to their enrollment date.
>
> A diagnosis is not required for a condition to be pre-existing. Genetic information, in itself, is not considered a condition.
>
> **Pre-existing condition limit**
>
> We will not pay benefits for services rendered for pre-existing conditions, unless those conditions were fully disclosed on the application for this policy and benefits relating to those conditions are not specifically excluded.
>
> * * *
>
> **Duration of limitation**
>
> The pre-existing condition limit will not exceed 12 months from the effective date of the covered person.

The policy defines pre-existing condition:

> Pre-existing condition means any disease, illness, sickness, malady or condition which medical advice, diagnosis, care or treatment was recommended or received during the specified time period prior to the covered person's effective date, which would have caused an ordinarily prudent person to seek medical diagnosis or treatment. * * *

Humana argues that because the Petitioner's services were for a pre-existing condition, they are not eligible for coverage.

Commissioner's Analysis

Humana, as a health care insurer that delivers, issues for delivery, or renews an expense-incurred hospital, medical, or surgical policy or certificate for individual coverage in Michigan, may include a limitation for pre-existing conditions. Section 3406f(1)(a) of the Insurance Code of 1956, MCL 500.3406f(1)(a), says:

> (1) An insurer may exclude or limit coverage for a condition as follows:
> (a) For an individual covered under an individual policy or certificate or any other policy or certificate not covered under subdivision (b) or (c), only if the exclusion or limitation relates to a condition for which medical advice, diagnosis, care, or treatment was recommended or received within 6 months before enrollment and the exclusion or limitation does not extend for more than 12

> months after the effective date of the policy or certificate. [Underlining added]

There is no real dispute here that the Petitioner received services for hepatomegaly from August 22, 2005, through August 22, 2006. The question is whether "medical advice, diagnosis, care, or treatment [for hepatomegaly] was recommended or received within 6 months" before the Petitioner was enrolled for health care with Humana, i.e., the six months from February 22 to August 22, 2005.

In order to answer this question, the Commissioner had the case file reviewed by an IRO. The IRO reviewer is certified by the American Board of Family Practice; is certified in emergency medicine by the American Association of Physician Specialists, Inc.; is assistant director at a large university school of medicine; and is in active practice.

The IRO reviewer observed that the Petitioner had been followed by XXXXX prior to August 22, 2005. The IRO reviewer observed that XXXXX office notes for December 10, 2004, and again on June 14, 2005, said the Petitioner "has a history of fatty liver." The IRO reviewer further said that the July 6, 2005, liver function tests were elevated, and that an abdominal retroperitoneal ultrasound report from July 15, 2005, stated, "The possibility of some mild hepatomegaly possibly due to fatty infiltrate is raised." The IRO reviewer also noted that XXXXX, in a July 25, 2005, letter, states "[The Petitioner] has had elevated transaminase levels ever since I first did labs on him two years ago -- he does have a fatty liver."

The IRO reviewer further explained:

> Hepatomegaly is the abnormal enlargement of the liver. Fatty infiltrate and cirrhosis are two causes of hepatomegaly. Diagnosis of hepatomegaly includes elevated liver function lab values and an ultrasound or CT scan to view the size and characteristics of the liver. The above mentioned physician notes, physician letter, lab values and ultrasound report all support the diagnosis of hepatomegaly prior to the dates in question. Therefore, there are multiple times in the medical record prior to the effective date of

> coverage of August 22, 2005, that confirm [the Petitioner] was being treated for hepatomegaly.

The Commissioner, discerning no reason to reject the conclusion of the IRO reviewer, finds that the Petitioner was receiving treatment for a pre-existing condition (hepatomegaly) within six months prior to August 22, 2005, and that any treatment for hepatomegaly from August 22, 2005, until August 22, 2006, was therefore excluded from coverage under the terms and conditions of the policy and state law.

V
ORDER

The Commissioner upholds Humana Insurance Company's October 19, 2007, final adverse determination.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.